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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 25 2011** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as a pastor. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC).

On appeal, the petitioner states that, in accordance with Internal Revenue Service (IRS) publication 557, "an organized church is not required to file Form 1023" because it is automatically exempt if it meets the requirements of section 501(c)(3) of the Internal Revenue Code (IRC). The petitioner submits additional documentation in support of the appeal.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
- (III) . . . in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

The issue presented is whether the petitioner has established that it is a bona fide nonprofit tax-exempt religious organization.

The regulation at 8 C.F.R. § 214.2(r)(3) defines a tax-exempt organization as "an organization that has received a determination letter from the IRS establishing that it, or a group it belongs to,

is exempt from taxation in accordance with section[] 501(c)(3) of the [IRC].” The regulation at 8 C.F.R. § 214.2(r)(9) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

With the petition, filed on May 25, 2010, the petitioner submitted a January 13, 2010 letter from the IRS advising it of its employer identification number (EIN). The letter specifically states that assignment of an EIN “does not grant tax-exempt status to non-profit organizations.” In response to a July 1, 2010 request for evidence (RFE), the petitioner stated in an undated statement that it had submitted the required information to the IRS, that it would receive its nonprofit status in September, and that the status would be valid from the date of its incorporation (January 19, 2010).

On appeal, the petitioner stated that it believed that as a church, it was not required to file for tax-exempt status from the IRS. The petitioner submitted a partial copy of IRS Publication 557, *Tax-Exempt Status for Your Organization*, on which it highlighted the provisions on page 21 that listed organizations not required to file an IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

Nonetheless, the regulations governing immigration under the purview of the United States Citizenship and Immigration Services (USCIS) and those governing federal taxation under the purview of the IRS serve two different purposes. While the IRS regulations may automatically exempt churches as nonprofit organizations for the purpose of determining whether such an organization is required to file a federal tax return and pay taxes, the USCIS regulation offers no such exemption for those organizations who seek benefits under immigration laws. We note that the IRS guidance to churches includes the following advisory:

Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because such recognition assures church leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits.

IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*.

Thus, the IRS recognizes that there may be reasons why a church may want to obtain official IRS recognition as a tax-exempt organization although under IRS regulations, the church is not required to do so. The IRS provides detailed guidance on how to obtain a determination letter that applies equally to churches as to other religious organizations. *Id.*

According to IRS Publication 557, the IRS does not automatically accept that a particular organization is a church simply because the organization states that it is. As the petitioner noted, the organization must meet the requirements of section 501(c)(3) to be automatically exempt, and one of the reasons for choosing to file the Form 1023 is to receive IRS recognition of the organization as a church.¹

Further, while the Act and its implementing regulations do not require an organization to establish that it is a church to qualify as a bona fide nonprofit religious organization, it must establish that its tax-exemption is based on its religious nature. As discussed earlier, the IRS and USCIS regulations serve different purposes, and while a currently valid letter from the IRS recognizing an organization as a church is required under USCIS regulation, the IRS automatic exemption of a church as nonprofit is unrelated to the USCIS requirements that the organization establish itself as both a religious organization and as a nonprofit organization for immigration purposes.

On appeal, the petitioner submits a copy of a November 30, 2010 letter from the IRS granting the petitioner tax-exempt status under section 501(c)(3) of the IRC as a church. However, the

¹ IRS Publication 557 at page 21.

petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The record as it consisted before the director demonstrates that the petitioner failed to submit the documentation required by the regulation to establish that the petitioner is a bona fide nonprofit religious organization. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal has been adjudicated based on the record of proceeding before the director.

The petitioner submitted no documentation of its tax-exempt status prior to the filing of the appeal. Further, the letter from the IRS recognizing the petitioner as tax-exempt under section 501(c)(3) is dated six months after the petition was filed. The petitioner has therefore failed to establish that it was a bona fide nonprofit religious organization at the time the petition was filed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.